

DRAFT LEASE 3/3/05 #2

**AGREEMENT OF LEASE FOR CONSTRUCTION AND
MAINTENANCE OF PUBLIC PARK**

THIS LEASE is made as of this ____ day of _____, 2005, by and between the CITY OF NEWPORT NEWS, VIRGINIA (the City), and the COUNTY OF YORK, VIRGINIA (the County).

W I T N E S S E T H:

WHEREAS, the City is the owner of certain real property located within the County of York, Virginia, consisting of approximately 187 acres, and identified more particularly on Exhibit A attached hereto, such property hereinafter being referred to as "the Property;" and

WHEREAS, the County desires to lease from the City all or a portion of the Property for the purpose of constructing and maintaining thereon a public park facility ("the Facility") to be used for the purposes described more fully below; and

WHEREAS, the City Council for the City of Newport News has approved the execution of this lease following the holding of a public hearing as required by Code of Virginia § 15.2-1800.

NOW, THEREFORE, in consideration of the mutual promises and covenants set out herein, the parties hereby agree as follows:

1. Lease.

The City hereby leases to the County the above-described Property to be used for the purposes set out below, subject to possible modification of the description of the leased Property at such time as the County 's design for the proposed Facility shall have been completed. Such modification will be mutually agreed upon in writing by both

parties, and will be depicted on a modification of Exhibit A. The parties agree and acknowledge that the County has not, as of the date of the execution of this Agreement, completed plans and designs for the proposed Facility, and that the final designs may not require the full use of all of the above-described Property for the Facility. The parties agree that, upon completion of the design of the Facility, the Property which shall hereafter be subject to the terms and conditions of this Agreement shall be only that portion of the Property which is shown on the modified Exhibit A.

2. Term.

The term of this lease shall be for forty (40) years from the effective date hereof. The effective date of this lease shall be the date on which this lease shall have been duly and lawfully executed by both parties. The term may be renewed by the mutual agreement of the parties for additional periods of up to forty (40) years, or for such longer periods of time as may be permitted by Code of Virginia § 15.2-2100, as it may be amended from time to time. The parties acknowledge and agree that it is their mutual intent to renew the term of this lease for successive periods of time for so long as the County shall abide by its obligations hereunder and continue to use the Property for the purposes set out herein, and the City enters into this lease with the full intent that future City Councils for the City of Newport News shall further extend the term of this lease agreement in accordance with applicable laws at such time as any lease term shall expire.

3. Rent.

Prior to the time that the final plans and designs for the Facility shall have been completed, the County shall pay to the City as annual rent an amount equal to any real property taxes paid during any year by the City to the County on all of the Property

described above, such amount to be prorated for partial years. Such amount shall be paid to the City on or before July 1 of each fiscal year, except that the payment for initial partial calendar year of the Lease term shall be paid on or before June 30, 2005.

Upon the completion of the County's final plans and drawings for the Facility, and any adjustment in the description of the Property subject to this Agreement, and award of the construction contract, or 18 months from the effective date hereof, whichever date is sooner, the County shall thereafter pay to the City as base rent an amount equal to six and one-half percent (6.5%) of the assessed value of the Property as so adjusted, assessed at the Property's full fair market value for tax purposes pursuant to Code of Virginia section 58.1-3663 and taking into consideration the Property's continued incorporation into the City's water system, as determined by the York County Tax Assessor from time to time in accordance with the reassessment cycle in effect in the County. The City shall have all rights to challenge and contest any such assessment as are afforded by applicable statutes to any owner of land located within York County. Rent shall be paid annually in a single installment on a calendar year basis, payment being made to the City on or before June 30 of every calendar year. The rent payment for the final year of the lease term shall be pro-rated as necessary for a partial year, unless the City shall have extended the term of the lease for an additional term prior to the time that such payment shall be due. As additional rent, the County shall rebate to the City in every year during which this lease agreement remains in effect, including renewal terms, any taxes paid by the City to the County on any of the Property as adjusted against which the County has levied taxes pursuant to Code of Virginia § 58.1-3603 and § 58.1-3663 or other statute. All such

taxes shall be rebated to the City within thirty (30) days of the payment of any such taxes to the County.

4. Use of Property.

The County may use the Property only for non-profit recreational and public park purposes, such uses including but not being limited to athletic fields, pedestrian and bicycle trails, playgrounds, restroom facilities, bleachers, picnic shelters, parking, utility support structures, storage and other utility buildings related to the maintenance and improvement of the public park and recreational facilities, and appurtenant sidewalks and roads. All such facilities shall be constructed at the County's sole cost and expense, and the County at its own cost shall obtain all necessary permits, licenses, and governmental approvals for the construction and maintenance of all such facilities. Any historic resources or artifacts found on the Property will be turned over to the City and County will prohibit artifact collecting and metal detecting on the Property.

5. Construction of Facilities.

All plans for the construction of any County facilities constructed on the Property, including all plans for the installation of landscaping, are subject to approval by the City.

The County shall provide all plans and materials necessary for review and approval and

will work with the City to have the plans proceed in an expeditious manner. The County

agrees and acknowledges that designs for the facilities shall minimize the use of impervious surfaces, and agrees further that as provided under the Watershed Management and Protection Overlay zoning district, no septic tanks or other facilities for the onsite treatment of sewage or wastewater shall be permitted on the Property. The

County will allow access to the Property by City during and after construction so that City may verify conformance with approved plans.

6. Utilities. The cost of all utilities serving the County's public park and recreational facilities shall be borne by the County.

7. Construction of Stormwater Management Facility.

The County shall construct one or more regional stormwater management ponds ("the BMP") to be designed and constructed to accept drainage not only from the County's facilities to be constructed on the Property, but also from commercial and residential development currently existing or to be constructed on real property located within the County and designated on the City's Regional BMP Master Plan produced by CDM in 1986 as the drainage area for the BMP identified as H-1. The County shall construct the BMP(s) at the County's own costs, in accordance with plans to be reviewed and approved by the City. The County shall not be permitted to begin use of the Property for the purposes above described until such time as the BMP(s) is completed and fully operational. Thereafter, the County shall maintain the BMP(s) at its own cost. In the event the County designates the BMP(s) as a regional stormwater management facility pursuant to Code of Virginia § 15.2-2243, the County shall be entitled to retain all costs collected by the County from landowners and developers whose land is allowed or required to drain into the BMP(s).

8. Maintenance of Facilities.

Upon the completion of the construction of the County's public park and recreational facilities, the County shall thereafter maintain such facilities at its own cost and to the same standard of maintenance and care which are consistent with and equal to

that of other comparable park and recreational facilities maintained by the County. The County agrees that all plans for the application of fertilizer or pesticides to any portion of the Property shall be submitted to the City for approval prior to the application of any such substances. The County will submit a maintenance plan for the BMP(s) to be constructed in accordance with Section 7 of this lease to the City for approval. Maintenance will be performed by County in accordance with this approved plan and County will allow access to BMP(s) by City to verify conformance with approved plan.

9. Security.

The County at its own cost shall erect a security fence with the location to be determined by the City. Any breaches in the fencing shall immediately be reported to the City, and any such breaches shall be repaired by the County at its own cost. The fencing shall be so designed and constructed as to prevent access to the adjacent Harwood's Mill Reservoir from the Property, and the County shall be responsible for monitoring security at the site and taking reasonable precautions to prevent access by the public from the Property to Harwood's Mill Reservoir. The County will provide access through the Property should it become necessary to efficiently conduct City operations.

10. Insurance.

The County shall at all times during the term of this lease agreement carry comprehensive general liability insurance in the minimum amount of \$ [amount to be determined by the City Attorney] _____, and shall obtain a certificate of insurance naming the City, its officers, agents, and employees, as additional insureds on any such policy, and shall provide a copy of a certificate to the City upon request

11. Agreement to Indemnify and Hold Harmless.

As required by Code of Virginia § 29.1-509 (E), the County agrees to defend, indemnify, and hold harmless the City and its officers, agents, and employees, from and against any and all damage, claim, liability, cost or expense, of every kind and nature, including any injury or damage to any personal property, arising out of the acts or omissions of the County's officials, employees, invitees, and guests in connection with the County's use of the Property.

WITNESS the following signatures and seals:

CITY OF NEWPORT NEWS, VIRGINIA

By _____ (SEAL)

Title _____

Approved as to form:

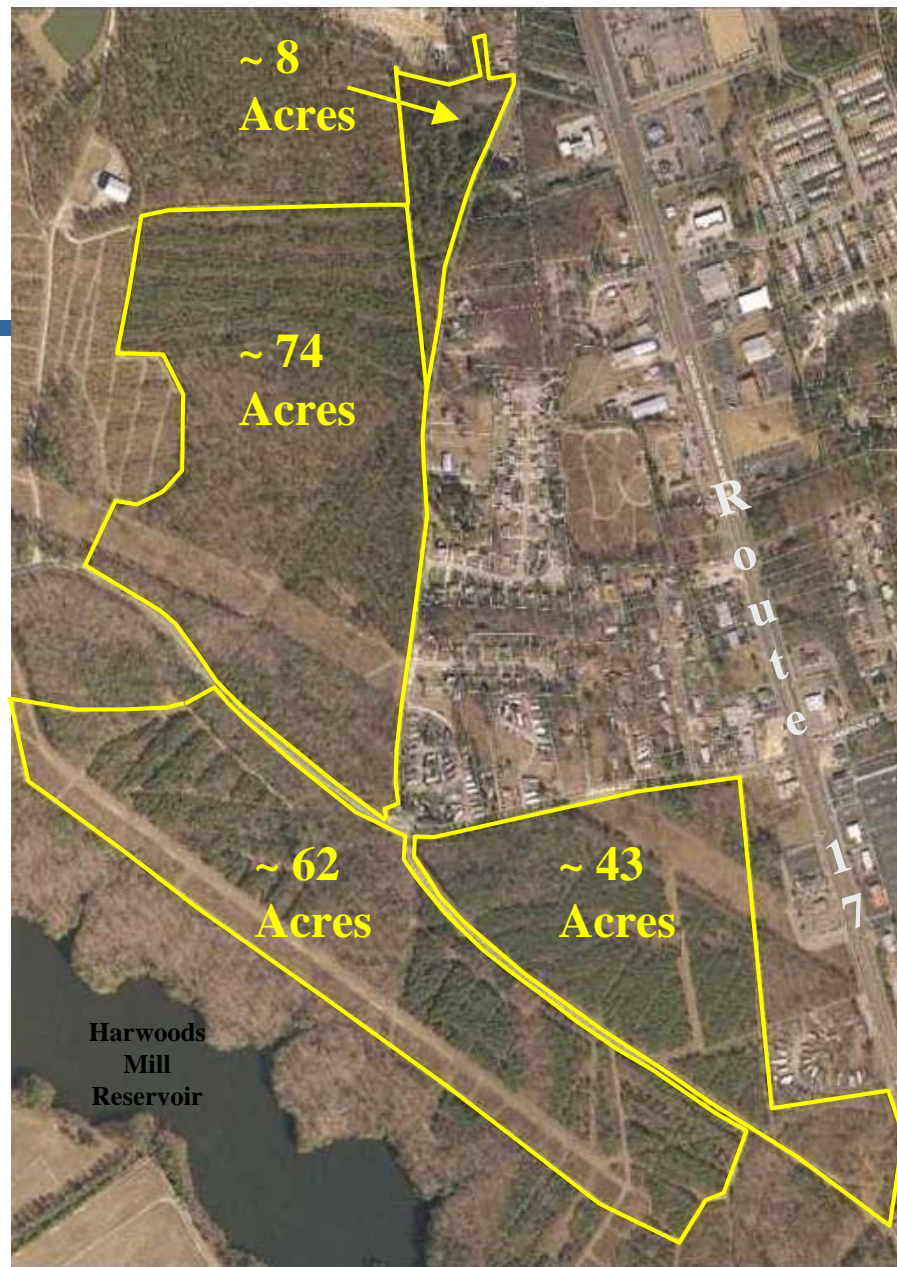
City Attorney

COUNTY OF YORK, VIRGINIA

By _____ (SEAL)
County Administrator

Approved as to form:

County Attorney



Park Lease Area – Exhibit A